IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4298 OF 2005

Shri Bharat Keru Lokhande. ...Petitioner.
Vs.
The State of Maharashtra & Ors. ...Respondents.
....
Mr.N. V. Bandiwadekar for the Petitioner.
Mr. R. D. Rane, GP for Respondent Nos.1 and 2.
Mr. I. M. Khairdi for Respondent Nos.5 and 6.
.....
CORAM : F.I. REBELLO, J. AND
DR.D.Y.CHANDRACHUD, J.

February 8, 2006.

P.C.

The Petitioner was teaching in a Secondary School. A vacancy arose in the Junior College. The proposal for appointing the Petitioner against the said vacancy was rejected on the ground that the reservation had not been worked out properly. Consequently, the present petition.

On behalf of the Respondent-State an affidavit has been filed. It is pointed out therein that when the vacancy arose, that vacancy cannot be filled in except by appointing a Shikshan Sevak. In the instant case, therefore, the Petitioner could not have been appointed. The effect of the transfer of the petitioner from the

Secondary School to the Junior College would be against the higher pay scales.

Having considered the arguments, we find that no useful purpose would be served by remanding the matter back for reconsideration.

Rule 41 of the M.E. P.S. Rules relied upon on behalf of the Petitioner only refers to transfer and that the teacher can be transferred from the Secondary School to the Junior College at the request of the employee. This will contemplate that the vacancy which has arisen can be filled in by transfer of a teacher from the Secondary School. In the instant case, considering the Shikshan Sevak Scheme, a vacancy which arises has to be filled in not by promotion but by direct appointment. In other words, if the Petitioner is appointed, that will entail higher financial burden on the State. In these circumstances, we do not find that the action of the Respondents though in the letter rejecting the application was wrongly stated, ultimately in his conclusion cannot be faulted. In these circumstances, we do not think that this is a fit case to exercise our extraordinary jurisdiction. The Petition is rejected.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)